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California; ATKN COMPANY, a
Nevada corporation, f/k/a Guy F.
Atkinson Company

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

MARY A. BOTTOMS, an individual and as)	CASE NO. 3:05-cv-03045 SI
trustee for the Bottoms Family 1989 Trust;)	
THE BLUE OAK CHARITABLE FUND, a)	JOINT APPLICATION AND
California non-profit public benefit corporation,)	STIPULATION TO AMEND THE
)	PRETRIAL PREPARATION ORDER AS
Plaintiffs,)	AMENDED
)	
vs.)	
)	
ATKN COMPANY OF CALIFORNIA, f/k/a)	
Guy F. Atkinson Company of California;)	
ATKN COMPANY, a Nevada corporation,)	
f/k/a Guy F. Atkinson Company, and DOES 1 -)	
100,k)	
)	
Defendants.)	

The parties to this action jointly stipulate and apply for a change in the Pretrial Preparation Order (as Amended July 23, 2007) to change the dates for various benchmarks in the progress of this action.

As explained in the June 29, 2007 Joint Application and Stipulation to Amend the Pretrial Preparation Order, discovery in this action has been hampered by a variety of factors. Foremost is that defendants ATKN are defunct, but retain literally thousands of boxes of documents in storage.

1 Of those thousands of boxes, nearly 100 boxes were identified as having documents that may be
 2 relevant to this dispute. The parties continue to progress in their review of these documents, but
 3 the large volume and the condition of the documents (many are more than 40 years old) continue to
 4 present challenges that exceed the estimates of the parties.

5 Neither party has conducted sufficient discovery to allow it to be adequately prepared by the
 6 January 30, 2008 discovery cut-off. Furthermore, the parties hope to conduct a second mediation
 7 session before launching into numerous depositions, which will likely require significant travel
 8 because 1) ATKN's predecessor, Guy F. Atkinson Co., had offices in several cities throughout the
 9 country, such that witnesses with relevant information may not have ever lived in the Bay Area, and
 10 2) the passage of so much time since the events that allegedly give rise to liability means that many
 11 witnesses have moved out of the area. Therefore, the deposition process is likely to be more
 12 difficult and expensive than it would be in other cases, and the parties would like to explore
 13 whether such depositions can be avoided by a negotiated settlement.

14 Counsel for the parties have met and conferred, and we believe that the following schedule
 15 should allow the parties sufficient time to explore mediation and still conduct full discovery, if
 16 necessary:

17	NON-EXPERT DISCOVERY CUTOFF:	August 1, 2008
18	DESIGNATION OF EXPERTS:	August 29, 2008
19	DESIGNATION OF REBUTTAL EXPERTS:	September 19, 2008
20	EXPERT DISCOVERY CUTOFF:	October 17, 2008
21	DISPOSITIVE MOTIONS FILED BY:	November 14, 2008
22	OPPOSITION DUE:	December 1, 2008
23	REPLY DUE:	December 8, 2008
24	HEARING DATE:	December 19, 2008
25	PRETRIAL CONFERENCE:	February ²⁴ 20 , 2009
26	TRIAL:	March 9, 2009

27 Furthermore, the parties stipulate that defendants may have leave to file a counterclaim in
 28 the form attached hereto as Exhibit A. Good cause exists for the filing of this counterclaim in that

1 recently decided case law (*United States v. Atlantic Research*, 127 S.Ct. 2331, 168 L.Ed.2d 28,
2 (2007)) suggests that such a counterclaim is necessary to place allocation of liability under
3 CERCLA in issue. Plaintiffs do not stipulate as to the validity of claims asserted or claims made by
4 defendants.

5 We respectfully request that the court issue a new Pretrial Preparation Order reflecting these
6 new dates and granting defendant leave to file the counterclaim attached hereto as Exhibit A.

7 SO STIPULATED.

8 DATED: December 20, 2007

LELAND, PARACHINI, STEINBERG
MATZGER & MELNICK, LLP

9
10 By: /s/ Mitchell Chyette
11 Mitchell Chyette
12 Attorneys for Plaintiffs
13 MARY A. BOTTOMS, Trustee of the BOTTOM
14 FAMILY 1989 TRUST and THE BLUE OAK
15 CHARITABLE FUND, a California Non-Profit
16 Public Benefit Corporation

17 DATED: December 20, 2007

GOLDSBERRY, FREEMAN & GUZMAN, LLP

18 By: /s/ Francis M. Goldsberry III
19 FRANCIS M. GOLDSBERRY III
20 Attorneys for Defendants
21 ATKN COMPANY OF CALIFORNIA,
22 f/k/a Guy F. Atkinson Company of
23 California; ATKN COMPANY, a
24 Nevada corporation, f/k/a Guy F.
25 Atkinson Company
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27
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1 Re: *Bottoms v. ATKN Company of California, et al.*
2 United States District Court
3 Northern District No.: 3:05-cv-03045 SI
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12 **EXHIBIT A**

13 **JOINT APPLICATION AND STIPULATION TO AMEND**
14 **THE PRETRIAL PREPARATION ORDER AS AMENDED**
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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

MARY A. BOTTOMS, an individual and as)	CASE NO. 3:05-cv-03045 SI
trustee for the Bottoms Family 1989 Trust;)	
THE BLUE OAK CHARITABLE FUND, a)	COUNTERCLAIM OF DEFENDANTS
California non-profit public benefit corporation,)	ATKN COMPANY OF CALIFORNIA AND
)	ATKN COMPANY
Plaintiffs,)	
)	
vs.)	
)	
ATKN COMPANY OF CALIFORNIA, f/k/a)	
Guy F. Atkinson Company of California;)	
ATKN COMPANY, a Nevada corporation,)	
f/k/a Guy F. Atkinson Company, and DOES 1 -)	
100,k)	
)	
Defendants.)	

1. Counterclaimants ATKN COMPANY OF CALIFORNIA AND ATKN COMPANY bring this counterclaim for contribution against counterdefendants MARY A. BOTTOMS, individually and as trustee for the Bottoms Family 1989 Trust, and THE BLUE OAK CHARITABLE FUND (collectively “counterdefendants”). This counterclaim arises out of the same transactions, occurrences and set of circumstances set forth in plaintiffs’ complaint. Jurisdiction and venue with respect to these counterclaims are proper in this Court under the

1 provisions of 42 U.S.C. § 9613(b).

2 2. Counterclaimant is informed and believes, and thereon alleges, that
3 counterdefendants are an “owner” or “operator” of “facilities” from which there has been a
4 “release” of hazardous substances into the “environment,” within the meaning of 42 U.S.C. § 9607.

5 3. Counterclaimants deny any and all liability to plaintiffs. However, if plaintiffs
6 obtain a judgment of joint and several liability on their complaint against counterclaimants,
7 counterclaimants are informed and believe that they will be liable for an amount greater than
8 counterclaimants’ equitable share of liability. Therefore, counterclaimants will be entitled to
9 contribution from counterdefendants pursuant to 42 U.S.C. § 9613(f).

10 **PRAYER**

11 Wherefore, ATKN COMPANY OF CALIFORNIA AND ATKN COMPANY pray for
12 judgment as follows:

- 13 (a) Contribution for any liability above and beyond counterclaimant’s equitable share;
14 and
15 (b) For such other and further relief as this Court may deem just and proper.

16
17 DATED: GOLDSBERRY, FREEMAN & GUZMAN, LLP

18
19 By: _____
20 FRANCIS M. GOLDSBERRY III
21 Attorneys for Defendants
22 ATKN COMPANY OF CALIFORNIA,
23 f/k/a Guy F. Atkinson Company of
24 California; ATKN COMPANY, a
25 Nevada corporation, f/k/a Guy F.
26 Atkinson Company
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